

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

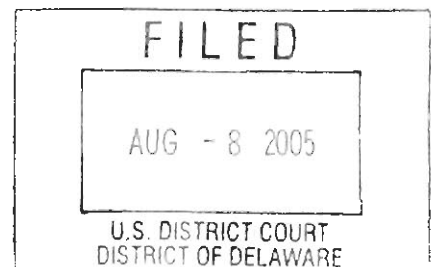
In re:)	
)	
AMERICAN METROCOMM)	Bankruptcy No. 00-3358 (PJW)
CORPORATION, <i>et al.</i> ,)	
)	
Debtors,)	
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THOMAS ABRAMS,)	
)	
Appellant,)	
v.)	Civil Action No. 04-1372 (JJF)
)	
AMC LIQUIDATING TRUST,)	
)	
Appellee.)	

SHORT RESPONSE TO APPELLEE REPLY BRIEF, and:
(1) MOTION TO CURE RECORD DUE TO 'EXCUSABLE NEGLIGENCE';
(2) MOTION TO FILE DESIGNATION OF RECORD OUT OF TIME

Appellant Thomas Abrams, appearing in proper person, herein files the above motions and a short response to the Appellee reply brief, as follows:

Although a citizen's right to appeal¹ is as elemental as it is sacrament, appellee ignorantly continues to argue this court lacks jurisdiction. In fact, denial of this appeal would be an *abuse of judicial discretion* absent a showing by the District Court of appellant's "flagrant bad faith" or "willful failure" to file his appeal notice, or "evidence of an intent to flout the District Court's instructions;"

¹U.S. Const. amend. XIV.



or “deliberate dilatory action,” or “callous disregard” by the present *pro se* appellant of his responsibilities to follow federal court procedures.²

Therefore, appellant respectfully motions for a judicial determination of “excusable neglect” as a matter of law and/or equity. This trial court has broad discretion in determining what constitutes “excusable neglect” under Rule 4(a) of the Federal Rules of Appellate Procedure, and such a determination is accorded great deference on appellate review and will not be reversed in the absence of an abuse of discretion.³

With respect to extending the time to file a notice of appeal based on excusable neglect, a trial judge also has wide discretion in dealing with a litigant whose predicament results from (as appellee alleges) blatant ignorance of clear or easily ascertainable rules. In the instant appeal, Judge Walsh allowed the Claimant to proceed *in forma pauperis* and allowed the Claimant to appeal his Order granting summary judgment. If Judge Walsh had not wanted to allow appellant IFP status or to file his appeal out of time – if the court had decided Abrams’ “neglect” was not excusable – he would have denied IFP and late-filing status and

²See, for example, *Poulis v. State Farm Fire & Casualty Co.*, 747 F. 2d 863; 714 F.2d 124 (3d Cir.1983); *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639,96 S.Ct. 2278, 49L.Ed.2d747 (1976); *Titus v. Mercedes Benz of North America*, 695F.2d746 (3 Cir.1982).

³See, for example, *Harris Truck Lines, Inc. v Cherry Meat Packers, Inc.* (1962) 371 US 215, 9 L Ed 2d 261, 83 S Ct 283; *United States v Ferrer* (1980, CA1 Puerto Rico) 613 F2d 1188.

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U.S.M.S.
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19801-6435

Record Pleading Enclosed

04-1372-JJF

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